



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1993

Ms. Margo M. Kaiser
JTPA Staff Attorney
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

OR93-386

Dear Ms. Kaiser:

You have asked this office whether certain information is subject to required public disclosure under the Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 20376.

The Texas Department of Commerce (the "department") has received an open records request for "a copy of the investigation report on the investigation by the [department] into allegations filed by Nikki Servia of procurement fraud by personnel of the East Texas Council of Governments." You indicate that department personnel have prepared an "interim report" concerning this investigation, but the department is still in the process of preparing a final report, which the department intends to release in its entirety to the requestor. You submitted the interim report to this office for review, and initially argued that this report was not responsive to the request described above. However, you have since sought clarification from the requestor,¹ and you have informed us that the interim report is responsive to the request. You argue that the interim report is excepted from required public disclosure by section 3(a)(11) of the act, which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency."

In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 413 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." The court has since denied a motion for rehearing in this case. We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. Based on this review, we have reached the limited conclusion

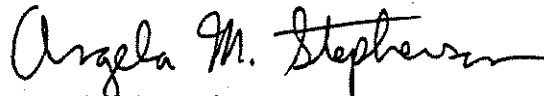
¹A governmental body may seek clarification of an open records request. See, e.g., Open Records Decision Nos. 561 (1990) at 8-9; 23 (1974).

that, in accordance with our past decisions, section 3(a)(11) still does not except from disclosure information that is purely factual and severable from the remainder of the document. *See, e.g.*, Open Records Decision Nos. 574 (1990); 209 (1978). In addition, objective observations of facts and events are not excepted from disclosure under section 3(a)(11). *See* Open Records Decision Nos. 470 (1987); 450 (1986). We are returning the interim report to you with the nonfactual portions marked; the remaining factual portions must be promptly released to the requestor.

As to the nonfactual portions of the report, we remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, however, you still desire to seek closure of the information pursuant to this section, you may submit additional detailed arguments as to the application of section 3(a)(11) as interpreted by the *Gilbreath* court to your case. You must submit any additional comments within 14 days of the date of this letter. This office will then review the remainder of your request in accordance with the *Gilbreath* decision. If you do not timely submit further arguments concerning the application of section 3(a)(11), we will presume that you have released the remaining portions of the interim report.

If you have any questions in regard to this ruling, please contact our office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Opinion Committee

AMS/JET/jmn

Ref.: ID# 20376
ID# 20682

cc: Ms. Betty Waters
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